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| DOCKET NO: LLI CV 13 6009045S | : | SUPERIOR COURT |
| TOWN OF WOODBURY<br>AND TOWN OF BETHLEHEM | :<br>: | JUDICIAL DISTRICT OF<br>LITCHFIELD |
| V. | : | AT LITCHFIELD |
| BOARD OF EDUCATION, REGIONAL SCHOOL DISTRICT NO. 14 | : | DECEMBER 9, 2013 |

**MEMORANDUM OF DECISION**

The plaintiffs in this case are the Town of Woodbury and the Town of Bethlehem. The defendant is the Board of Education, Regional School District No. 14. The plaintiffs have sued the defendant for 1) a declaratory judgment as to the validity of a referendum vote on whether to appropriate $63,820,605 for renovation of and additions to Nonnewaug High School, and whether to authorize the issuance of bonds and notes in the same amount to finance the appropriation; and 2) an injunction pursuant to General Statutes § 9-371b. The defendant has filed an answer and counterclaims for a declaratory judgment with regard to the validity of the referendum; and 2) an order of mandamus to certify the results pursuant to General Statutes § 10-47c.

**I. Facts**

The parties have stipulated to the following facts:

The defendant, Board of Education for Regional School District #14 ("Region 14"), is a regional public school district organized under Conn. Gen. Stat. §10-39 et seq. Specifically, Region 14 is a grades K-12 school district created to educate the children in the Towns of Bethlehem and Woodbury. The plaintiff, Town of Bethlehem is a municipality organized and

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operating pursuant to the laws of the State of Connecticut. The plaintiff, Town of Woodbury is a municipality organized and operating under the laws of the State of Connecticut. The Towns of Bethlehem and Woodbury are the towns that comprise Region 14. Region 14 was established by way of a majority vote in each of the Towns on May 20, 1968 to regionalize their schools and establish a regional school district, with schools located in the Towns of Bethlehem and Woodbury, for the purpose of providing the necessary facilities and administering grades Kindergarten through 12 in said schools. Region 14's Board of Education was established in 1969. Among the schools operated by Region 14 is Nonnewaug High School in Woodbury.

At a duly noticed special meeting convened on May 16, 2013, following a duly noticed and warned public hearing/district meeting, the defendant Board of Education voted in favor of a resolution appropriating $63,820,605 for the renovation of and additions to the Nonnewaug High School, and authorizing the issuance of bonds and notes in the same amount to finance this appropriation. By way of further resolution, the Board of Education recommended to the Towns within Region 14 that the aforesaid bond and not authorization be approved by referendum vote, with said referendum to be held in each of the Towns on June 18, 2013. The Board of Education voted at said meeting to place on the referendum ballot the following question: Shall Regional School District Number 14 appropriate $63,820,605 for renovation of and additions to Nonnewaug High School, and authorize the issue of bonds and notes in the same amount to finance the appropriation?"

On May 19, 2013, via e-mail, the defendant notified the Town Clerks of the Towns of Woodbury and Bethlehem that the defendant's Board of Education had approved the ballot question and date of the building referendum. The defendant forwarded the draft minutes

reflecting their actions, including the afore-mentioned resolutions approved by the Board of Education, along with a copy of the referendum question to be placed on the ballot. The Town Clerks did not arrange for notice of the referendum to be published in a newspaper of general circulation in the Town of Bethlehem and Woodbury.

The Registrar of Voters of the Town of Woodbury submitted a document to the media with the following heading: "Notice-News Release-For Immediate Release-Reminder-Please Publish ASAP-Thank You." After receipt of this document from the Register, *Voices*, which is a newspaper that has a general circulation in the Towns of Bethlehem and Woodbury, published in its June 12, 2013 edition an article setting forth: a) the question to be voted upon, b) the polling locations in both Towns, and c) the time and the date of the referendum, as requested by the Register. The article further indicated who were eligible voters, and contact information for both the Town Clerks and Registrars of Voters in both Towns. The above-mentioned was <u>not</u> placed by *Voices* in its "legal notice" season.

The circulation of *Voices* in the Town of Bethlehem is 1,360; in the Town of Woodbury, it is 3,338. The circulation of the daily edition of the *Waterbury Republican-American* in the Town of Bethlehem is 402; in the Town of Woodbury, it is 1,062.

The referendum did garner additional publicity via various means. Examples of the publicity given to the referendum were the following: In the *Waterbury Republican American,* there were numerous articles concerning the referendum. In *Voices*, there were numerous articles concerning the referendum. Notice of the date, time and question to be voted on with regard to the referendum was posted on the defendant's website. Prior to the referendum, the defendant sent to every resident in the Towns via the mail notice of the upcoming referendum. The

defendant utilized its "Alert Now" robo-calling system to contact District parents/voters and notify them of the date, time, and places to vote with regard to the referendum.

Other examples of publicity and attempts to publicize in the community include but are not limited to the following: publicized tours of the high school building (with bussing provided for residents wishing to take the tour), discussions of and presentation on the project/referendum at town board meetings and senior centers, a public hearing on the project immediately preceding the special meeting that set the referendum date on May 16, 2013, and prominent signage, including hand-held signs and banners. On June 18, 2013, the referendum question passed by a vote of 1,269 to 1,265. The defendant has conducted numerous referenda in the same (late spring) time period over the last 3 years. On May 7, 2013, a referendum (which was "legally noticed") on the District's budget passed by a vote of 1250 to 1152. On June 26, 2012, a referendum (which was "legally noticed") on the District's budget was passed by a toe of 1,105 to 1,027. On June 6, 2012, a referendum (which was "legally noticed") on the District's budget was rejected by a vote of 1,210 to 843. On May 8, 2012, a referendum (which was "legally noticed") on the District's budget was rejected by a vote of 1,203 to 836. On June 6, 2011, a referendum (which was "legally noticed") on the district's budget was passed by a vote of 1,080 to 1,010. On May 18, 2011, a referendum (which was "legally noticed") on the District's budget was rejected by a vote of 1,100 to 1,075. On May 4, 2011, a referendum (which was "legally noticed") on the District's budget was rejected by a vote of 1,289 to 1,036.

Subsequently, concerns over the lack/sufficiency of the "legal notice"/warning issued by the Town Clerks have come to the attention of all the parties. Connecticut General Statutes §10-47c provides in pertinent part: "The town clerk of each town shall certify the vote of the

town to the regional board of education and the Commissioner of Education." In light of their opinions or concerns regarding the validity of the referendum, the Town Clerks for the Towns of Bethlehem and Woodbury have not yet certified the results of the referendum to the commissioner of Education. Currently pending in the Superior Court for the Judicial District of Waterbury is Arras, et al v. Regional School District #14, et al, Docket No: UWY-CV13-5016462-S, which is a case brought by 5 voters/residents of the Towns seeking the invalidation of the same referendum that is the subject of the instant case.

Connecticut General Statutes §10-56(a) expressly empowers regional school districts to build, equip, maintain and expand schools. Furthermore, Connecticut General Statutes § 10-56(a) expressly authorizes regional school districts to "issue bonds, notes or other obligations in the name and upon the full faith and credit of such district and the member towns to acquire land, prepare sites, purchase or erect buildings and equip the same for school purposes, if so authorized by referendum." Connecticut General Statutes §10-56(a) also provides such a referendum "shall be conducted in accordance with the procedure provided in [Connecticut General Statutes] §10-47c except that any person entitled to vote under [Connecticut General Statutes] §7-6 may vote and the question shall be determined by the majority of those persons voting in the regional school district as a whole."

In pertinent part, Connecticut General Statutes §10-47c provides that a regional board of education shall set the date for referenda which shall be held simultaneously in each member town between the hours of 6:00 AM and 8:00 PM. The statute further provides that at least 30 days before the date of the referenda, the regional board of education shall notify the town clerk in each member town to call the referendum on the specified date to vote on the specified

question. Finally, the statute provides that "[t]he warning of such referenda shall be published, the vote taken and the results thereof canvassed and declared in the same manner as is provided for the election of officers of a town."

Connecticut General Statutes §9-226 sets forth the requirements for warning such a town election, and provides in pertinent part: The warning of each municipal election shall specify the objects for which such election is to be held. Notice of a town election shall be given by the town clerk or assistant town clerk, by publishing a warning in a newspaper published in such town or having a general circulation therein, such publication to be not more than fifteen, nor less than five days previous to holding the election. The town clerk in each town shall, in the warning for such election, give notice of the time and the location of the polling place in the town and, in towns divided into voting districts, of the time and the location of the polling place in each district. The town clerk shall record each such warning.

Connecticut General Statutes §1-2 provides as follows: Each provision of the general statutes, the special acts or the charter of any town, city or borough which requires the insertion of an advertisement of a legal notice in a daily newspaper shall be construed to permit such advertisement to be inserted in a weekly newspaper; but this action shall not be construed to reduce or otherwise affect the time required by law for giving such notice. Whenever notice of any action or other proceeding is required to be given by publication in a newspaper, either by statute or order of court, the newspaper selected for that purpose, unless otherwise expressly prescribed, shall be one having a substantial circulation in the town in which at least one of the parties, for whose benefit such notice is given, resides.

## II. Discussion

General Statutes § 10-56 (a) empowers regional school districts to build, equip, maintain and expand schools. This provision also authorizes regional school districts to "issue bonds, notes or other obligations in the name and upon full faith and credit of such district and the member towns to acquire land, prepare sites, purchase or erect buildings and equip the same for school purposes, if so authorized by a referendum," which "shall be conducted in accordance with the procedure provided in § 10-47c except that any person entitled to vote under § 7-6 may vote and the question shall be determined by the majority of those persons voting in the regional school district as a whole." General Statutes § 10-56 (a).

General Statutes § 10-47c provides in relevant part that a regional board of education "shall set the date for referenda, which shall be held simultaneously in each member town . . . . At least thirty days before the date of the referenda, the regional board of education shall notify the town clerk in each member town to call the referendum on the specified date to vote on the specified question. The warning of such referenda shall be published, the vote taken and the results thereof canvassed and declared in the same manner as is provided for the election of officers of a town."

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the location of the polling place in the town and, in towns divided into voting districts, of the time and the location of the polling place in each district. The town clerk shall record each such warning."

Connecticut's case law is devoid of cases addressing the need for strict compliance with the publication of notice requirement contained in General Statutes § 9-226. However, for the reasons given hereafter, the court finds that the failure to strictly comply with the requirement that notice of a town election be given "by publishing a warning in a newspaper," alone, is insufficient to invalidate referendum results. Rather, in order to invalidate referendum results based on a failure to publish a formal "warning" in a newspaper, the challenging party must establish actual prejudice from the error that affected the outcome of the vote.

In support of their position, the plaintiffs direct the court's attention to *Gendron* v. *Naugatuck*, 21 Conn. Supp. 78, 144 A.2d 818 (1958), in which the court held that the failure to give adequate and proper notice of a public hearing on a proposed zoning ordinance constituted a fatal jurisdictional defect, and, therefore, the ordinance was not legally operative or valid. The court based its decision on the fact that the power to enact zoning regulations is conferred by statute and, therefore, requires strict compliance. Id. The court explained that the statute at issue required notice of the hearing be published in the newspaper, but that no official request was made that notice be published, no paid advertisements were inserted into the newspapers, and, although there was some mention of the public hearing in articles published in two newspapers, none of the defendants had actual knowledge of the content of those articles. Id.

It is well established that "[s]trict compliance with statutory mandates regarding notice to the public [of zoning matters] is necessary;" *Koskoff* v. *Planning & Zoning Commission*, 27

Conn. App. 443, 447, 607 A.2d 1146, cert. granted, 222 Conn. 912, 608 A.2d 695 (1992); and that the "[f]ailure to give proper notice constitutes a jurisdictional defect." *Slagle* v. *Zoning Board of Appeals*, 144 Conn. 690, 693, 137 A.2d 542 (1957). The present case, however, does not involve zoning statutes and the policy implications underlying the interpretation of zoning statutes differ from the policy concerns addressed in election cases. Indeed, the cases addressing compliance with election laws provide guidance that is more applicable to the circumstances of the present case.

The plaintiffs also direct the court's attention to *Pollard* v. *Norwalk*, 108 Conn. 145, 146-47, 142 A. 807 (1928), in which the court nullified a vote authorizing serial bonds because of the failure to strictly comply with the two week notice requirement set forth in the city charter. The court explained that "the law of this State was settled that the requirements of the statute as to the length of time before any town meeting that notice should be given of it must be complied with literally . . . ." Id., 146. In reaching its decision, the court relied on *Brooklyn Trust Co.* v. *Hebron*, 51 Conn. 22 (1883), where a town, which had been authorized by the legislature to guarantee certain railroad bonds, could not be compelled to do so where only four days, as opposed to five days, notice was given of the vote. The *Hebron* court explained that "[t]he assembled voters are without power to act for or bind the town unless they have been called together in the statutory way and at the statutory time. There is no opportunity for the application of the rule that the deeds of parties are to have effect rather than to be destroyed; that rights are to be upheld rather than forfeited; for if there has been no meeting, no deed has been executed, no right brought into existence, and it has been impossible for the town to have any intention; there is absolutely nothing to consider. Nor is there opportunity for the discussion of the question as to

reasonableness or unreasonableness; in the presence of a statute that only can be reasonable which it requires; anything less must be unreasonable." Id., 29.

The *Pollard* court further articulated that "[t]he New England town meeting is a distinctive institution, governed by the law as developed in New England, and resort to decisions outside its boundaries can serve little purpose. Here it is settled by a long line of decisions from the earliest times that a town can act legally only in a meeting duly warned and holden. . . . The votes of a meeting of which notice has been given for less than the period required by the statute, though it be only for a single day, are no more binding upon the town than if the meeting had been held without notice, or had been a mere fortuitous assembling of any portion of the inhabitants of the town. . . . The meetings of our cities and boroughs authorized by special charter provision are the direct successors of the town meeting and are governed by the same law." (Citations omitted; internal quotation marks omitted.) *Pollard* v. *Norwalk*, supra, 108 Conn. 147.

*Pollard* and *Hebron* are not relevant to this court's analysis because those cases deal with town meetings, which are different and distinct from a referendum. In *Sadlowski* v. *Manchester*, 206 Conn. 579, 590, 538 A.2d 1052 (1988), our Supreme Court stated that "[a] referendum in which individual voters cast individual ballots in individual voting booths does not constitute a town meeting." The court further explained that "[w]e have found no statutes that suggest an equivalence . . . between town meeting and referendum." Id., 593. Furthermore, General Statutes § 9-1 (n) defines "referendum" as "(1) a question or proposal which is submitted to a vote of the electors or voters of a municipality at any regular or special state or municipal election, as defined in this section, (2) a question or proposal which is submitted to a vote of the electors or

voters, as the case may be, of a municipality at a meeting of such electors or voters, which meeting is not an election, as defined in subsection (d) of this section, and is not a town meeting, or (3) a question or proposal which is submitted to a vote of the electors or voters, as the case may be, of a municipality at a meeting of such electors or voters pursuant to section 7-7 or pursuant to charter or special act."

Rather, cases addressing compliance with election laws provide applicable guidance to this court. In *Caruso* v. *Bridgeport*, 285 Conn. 618, 652, 941 A.2d 266 (2008), an unsuccessful mayoral candidate challenged election results, but failed to meet "his heavy burden of proving that the combined effect of the understaffing of the polling places, the alleged bias of the poll workers and the alleged irregularities [placed] the result of the election *seriously in doubt*, thereby entitling [him] to a new election." (Emphasis in original.) Indeed, the court refused to overturn the election in the absence of proof that any of the irregularities actually affected the result. Id., 652-53. Our Supreme Court explained that "under our democratic form of government, an election is the paradigm of the democratic process designed to ascertain and implement the will of the people. . . . [E]lection laws . . . generally vest the primary responsibility for ascertaining [the] intent and will [of the voters] on the election officials . . . . We look, therefore, first and foremost to the election officials to manage the election process so that the will of the people is carried out. . . . Moreover, [t]he delicacy of judicial intrusion into the electoral process . . . strongly suggests caution in undertaking such an intrusion. . . . Finally, we have recognized that voters have a powerful interest in the stability of [an] election because the ordering of a new and different election would result in *their* election day disfranchisement. . . . [This] background counsels strongly that a court should be very cautious before exercising its

power under the [statutes governing election contests] to vacate the results of an election and to order a new election." (Citations omitted; emphasis in original; internal quotation marks omitted.) Id., 637-38.

The court further articulated that one challenging election results must show that "(1) there were *substantial* violations of the requirements of the statute . . . and (2) as a result of those violations, the reliability of the result of the election is *seriously in doubt*." (Emphasis in original; internal quotation marks omitted.) Id., 649; see *Bortner* v. *Woodbridge*, 250 Conn. 241, 258, 736 A.2d 104 (1999) (plaintiff not required to establish that he would have prevailed in election but only that there were substantial errors that placed reliability of election result seriously in doubt). With these principles in mind, the court noted that it "has ordered a new election in two cases: *Wrinn* v. *Dunleavy*, [186 Conn. 125, 152, 440 A.2d 261 (1982)], and *Bauer* v. *Souto*, [277 Conn. 831, 896 A.2d 90 (2006)]. In *Wrinn*, the plaintiff was defeated in the primary election by a margin of eight votes and we determined that twenty-five out of twenty-six of the improperly mailed absentee ballots had been cast for the plaintiff's opponent. *Wrinn* v. *Dunleavy*, supra, 129 n.5. In *Bauer*, the trial court found on the basis of undisputed evidence that, if a malfunctioning voting machine had been operating properly, the plaintiff would have received at least 103 more votes than he had received and he would have been elected. *Bauer* v. *Souto*, supra, 837." (Internal quotation marks omitted.) *Caruso* v. *Bridgeport*, supra, 285 Conn. 652 n.30.

Our Supreme Court has expressed that General Statutes § 9-328, which permits a judge to order a new election, "cannot be read in a vacuum. It must be read against its fundamental governmental background. That background counsels strongly that a court should be very cautious before exercising its power under the statute to vacate the results of an election and to

order a new election.

"First, under our democratic form of government, an election is the paradigm of the democratic process designed to ascertain and implement the will of the people. . . . [The election] statutes rest on the bedrock principle that the purpose of the voting process is to ascertain the intent of the voters. . . . Second, § 9-328 authorizes the one unelected branch of government, the judiciary, to dismantle the basic building block of the democratic process, an election. Thus, [t]he delicacy of judicial intrusion into the electoral process . . . strongly suggests caution in undertaking such an intrusion. . . . Third, § 9-328 requires a court, in determining whether to order a new election, to arrive at a sensitive balance among three powerful interests, all of which are integral to our notion of democracy, but which in a challenged election may pull in different directions. One such interest is that each elector who properly cast his or her vote in the election is entitled to have that vote counted. Correspondingly, the candidate for whom that vote properly was cast has a legitimate and powerful interest in having that vote properly recorded in his or her favor. When an election is challenged on the basis that particular electors' votes for a particular candidate were not properly credited to him, these two interests pull in the direction of ordering a new election. The third such interest, however, is that of the rest of the electorate who voted at a challenged election, and arises from the nature of an election in our democratic society, as we explain in the discussion that follows. That interest ordinarily will pull in the direction of letting the election results stand.

"An election is essentially—and necessarily—a snapshot. It is preceded by a particular election campaign, for a particular period of time, which culminates on a particular date, namely, the officially designated election day. In that campaign, the various parties and candidates

presumably concentrate their resources—financial, political and personal—on producing a victory on that date. When that date comes, the election records the votes of those electors, and only those electors, who were available to and took the opportunity to vote—whether by machine lever, write-in or absentee ballot—on that particular day. Those electors, moreover, ordinarily are motivated by a complex combination of personal and political factors that may result in particular combinations of votes for the various candidates who are running for the various offices.

"The snapshot captures, therefore, only the results of the election conducted on the officially designated election day. It reflects the will of the people as recorded on that particular day, after that particular campaign, and as expressed by the electors who voted on that day. Those results, however, although in fact reflecting the will of the people as expressed on that day and no other, under our democratic electoral system operate nonetheless to vest power in the elected candidates for the duration of their terms. That is what we mean when we say that one candidate has been 'elected' and another 'defeated.' No losing candidate is entitled to the electoral equivalent of a 'mulligan.'

"Moreover, that snapshot can never be duplicated. The campaign, the resources available for it, the totality of the electors who voted in it, and their motivations, inevitably will be different a second time around. Thus, when a court orders a *new* election, it is really ordering a *different* election. It is substituting a different snapshot of the electoral process from that taken by the voting electorate on the officially designated election day.

"Consequently, all of the electors who voted at the first, officially designated election . . .

have a powerful interest in the stability of that election because the ordering of a new and different election would result in *their* election day disfranchisement. The ordering of a new and different election in effect disfranchises all of those who voted at the first election because their validly cast votes no longer count, and the second election can never duplicate the complex combination of conditions under which they cast their ballots.

"All of these reasons strongly suggest that, although a court undoubtedly has the power to order a new election pursuant to § 9-328 and should do so if the statutory requirements have been met, the court should exercise caution and restraint in deciding whether to do so. A proper judicial respect for the electoral process mandates no less." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Bortner* v. *Woodbridge*, supra, 250 Conn. 254-57.

One superior court has had the opportunity to apply these principles to a referendum challenge. In *Dvorsky* v. *Board of Education*, Superior Court, judicial district of Litchfield, Docket No CV-11-6004173-S (May 6, 2011, *Danaher III, J.*), the plaintiff challenged the results of a referendum based on voting irregularities, in that five percent of voters were not required to show identification in violation of General Statutes § 9-261. The court applied *Caruso* and found no evidence that the failure to require identification from five percent of the voters constituted a substantial violation of the statute and determined that there was no reasonable basis to conclude that the reliability of the election was seriously in doubt. Id.; see *Caruso* v. *Bridgeport*, supra, 285 Conn. 618. In fact, the court noted that "nearly two full months passed between the referendum and the hearing, yet the plaintiff failed to identify even a single case in which a . . . voter was disenfranchised in any way." Id. In deciding to uphold the referendum, the *Dvorsky* court was particularly "mindful of the admonition in *Bortner* v. *Woodbridge*, supra, 250 Conn.

241, that is should be 'very cautious' before vacating the results of an election – an admonition that logically applies with at least equal force when the challenge is to a referendum." *Dvorsky* v. *Board of Education*, supra.

In the present case, the parties acknowledge that there is no case law on point with regard to the specific issue of notice or "warning" of an election or referendum. However, other jurisdictions have addressed such issues and held that defects in notice for an election do not invalidate election results. This court finds guidance in those cases.

In *Vickers* v. *Schultz*, 195 Wash. 651, 81 P.2d 808 (1938), the Washington Supreme Court held that the failure to post notices of a special election in each polling place thirty days before the date of the election was not fatal where the voters were sufficiently informed of the election through other sources. The court explained that it "early held that requirements of a statute providing for the giving of notices of an election, either general or special, were directory rather than mandatory, unless the statute itself declares that the election shall be void if the statutory requirements are not strictly observed, or the court can see from the record that the result of the election might have been different had there been a strict compliance with the statutory requirements. . . . An election will not be declared invalid for any irregularities when it appears that the result of the election was an intelligent expression of the popular will, and the want of statutory notice did not result in depriving sufficient of the electors of the opportunity to exercise their franchise to change the result of the election. . . . The rule established by an almost unbroken current of authority is that the particular form and manner pointed out by the statute for giving notice is not essential; and, where the great body of the electors have actual notice of the time and place of holding the election, and of the questions submitted, this is sufficient. The vital

and essential question in all cases is whether the want of the statutory notice has resulted in depriving sufficient of the electors of the opportunity to exercise their franchise to change the result of the election." (Citations omitted; internal quotation marks omitted.) Id.

In fact, similar to the present case, the *Vickers* court noted that the election was given more publicity and more information concerning the election was conveyed to the electors than strict compliance with the statute would have afforded. Id. In upholding the election, the court relied on the fact that the election was a matter of continued public discussion and controversy and that "[t]he want of statutory notice, it is clear, did not result in deprivation of sufficient number of the electors of the opportunity to exercise their franchise to change the result of the election. . . . [T]he vote . . . was such, as compared with votes upon other propositions, as indicates an intelligent and well-informed expression of the popular will." Id. The court explained that it has "consistently held that unless the statute, which prescribes the form and manner of publishing election notices, expressly provides that noncompliance with the statute will render the election void, it is regarded as declaratory rather than mandatory. The election will be held valid even if there is a variance from the terms of the statute if the election was a fair one; that is, if information concerning the election was communicated to the electors by means other than the official notices and if the electors generally participated in the election so that the election as held constituted a reliable expression of popular opinion." Id.

The *Vickers* court relied upon one of its earlier decisions, *Groom* v. *Port of Bellingham*, 189 Wash. 445, 65 P.2d 1060 (1937), in which a notice of election, published and posted, covered the matter of the general, port district and public utility district elections, but failed to include the proposition for the improvement of the harbor or the issuance of any bonds. The

election was held and the propositions passed by a substantial majority. Id. The election was challenged on the ground that the two propositions did not appear upon the election notice. Id. The court upheld the election results and explained that "[t]o this election, aside from the election notice, there was given wide publicity. The matter of the improvement of the port and the issuing of the bonds was discussed in the newspapers, over the radio, at public meetings, and 30,000 copies of the official ballot, which carried the propositions here in question, were circulated generally and extensively to the voters throughout the county. Appearing upon the election ballot at the general election, there were constitutional amendments, initiatives, referendums, and other propositions, and upon these approximately the same number of votes were cast as were cast upon the port propositions. A port commissioner was elected, and the vote cast for port commissioner was likewise practically the same as the vote upon the propositions stated." Id. The court noted that "where the result of the election shows that it is 'an intelligent expression of the popular will,' the result will not be set aside for irregularity." Id.

The *Groom* court found that "if the election notice had contained the propositions referred to and there had been given no further publicity to the matter whatever, the election would have conformed to the law and would have been valid. So far as advising the voters was concerned, the publishing and posting of the notice would have been merely nominal in comparison with what was done in this case in an endeavor to bring to the attention of the voters . . . the propositions that they were to vote upon relative to the port. It may be true, and probably is, that no one failed to vote upon the propositions because they did not appear upon the election notice. It unquestionably is true that not a sufficient number of the voters failed to vote to change the result of the election. The vote was such, as compared with the votes upon other propositions,

as to indicate an intelligent and well-informed expression of the popular will." Id.

Similarly, in *People ex rel. Patterson* v. *Carlsbad*, 128 Cal. App. 2d 77, 274 P.2d 740 (1954), election results concerning the incorporation of city were challenged on the ground that the notices did not strictly comply with the statute as they were not published during the last two weeks prior to the election and did not contain, inter alia, the date of the election. The appellant argued that "in the absence of the notice required by the statutes no showing of actual knowledge is sufficient unless it shows that each qualified voter had such knowledge, or unless it is established that those not voting could not have affected the result." Id. The court rejected this argument and upheld the vote, despite the notice defects, in light of the fact that "[t]he date of the election was repeatedly and widely publicized with a cumulative effect far beyond that which would normally follow a mere compliance with the statute." Id. The court also found that "[t]he fact that the official publications of the notice were not made during the last two weeks should not be held sufficient to vitiate the election in view of the convincing evidence of the widespread unofficial publicity which followed, and which continued up to the time of the election." Id.

In rejecting the need for strict compliance, the court stated that "[t]he test for determining whether an election is invalidated because of a failure to strictly comply with the notice provisions prescribed by the statute has frequently been stated to be whether the voters generally have had knowledge of the election and full opportunity to express their will, or whether the variance may have affected the result by depriving a sufficient number of voters of the opportunity to exercise their franchise." Id. The court found that "an unusually vigorous campaign was carried on, and every voter received a notice from the registrar of voters giving the date and place where he was to vote. . . . The fact that the official publications of the notice were

not made during the last two weeks should not be held sufficient to vitiate the election in view of the convincing evidence of the widespread unofficial publicity which followed, and which continued up to the time of the election." (Citation omitted.) Id.

In *State ex rel. Board of Education* v. *Jones*, 72 Ohio Law Abs. 301, 131 N.E.2d 704 (1955), an election to authorize a school bond issuance was challenged on the ground that notice was not published in accordance with a statute, which required notice to be publish for four consecutive weeks prior to the election. Based on an extensive advertising campaign, the court found substantial compliance with the statute and nothing to indicate that the result of the election might have been different had there been full compliance. Id. The court explained that "[u]nsubstantial irregularities in proceedings of a municipality in inaugurating an election on a bond issue for public improvement, which irregularities do not prejudice any one, will be disregarded. . . . The rule that election laws are, as a general rule, to be construed liberally, so as to preserve, if possible, and not defeat, the choice of the people as expressed at an election, applies to omissions and irregularities with respect to giving of notice thereof. Thus in most instances, a mere irregularity in giving of notice of a special election, or the failure to give such notice for full time prescribed in the statute, is not fatal to the validity thereof where knowledge of its approach and of the question to be passed upon is general throughout the political subdivision in which it is held, where a comparatively full vote is cast, and where it does not appear that by the mere irregularity in the notice any elector was misled to his disadvantage." (Citations omitted; internal quotation marks omitted.) Id.

Likewise, in *Yonce* v. *Lybrand*, 254 S.C. 14, 173 S.E.2d 148 (1970), the South Carolina Supreme Court held that the failure to strictly comply with the statutory requirements regarding

publication of notice of a referendum did not render the referendum illegal. The court explained that "[w]hile it would have been far better if the officials in question had complied strictly with the rather simple directions of the statute . . . the result of the election was not affected or rendered doubtful in any way by the deviations relied upon. It is apparent from the record that the body of electors was well advised of the election and that it resulted in a full and fair expression of their will. . . . The required publication of an appropriate notice was not jurisdictional, but was to insure public notice of the election, which had been authorized by the legislature. No inference may be drawn from the record that a single vote was lost or affected by failure to publish a notice in strict compliance with the statute. It is, instead, clearly infer able that the publicity actually brought to bear on the issue was [far] greater than would have been afforded by strict compliance alone." Id. According to the court, this was "an appropriate case for application of the rule that '(u)less the result of an election is changed or rendered doubtful, it will not be set aside on account of mere irregularities or illegalities.' . . . [W]here the result of an election is not made doubtful nor changed, irregularity or illegalities, in the absence of fraud, will not cause the expressed will of the body of the voters to be set aside, unless a constitutional provision is violated or it is specifically provided by legislative enactment that such irregularity or illegality shall invalidate the election." (Citations omitted; internal quotation marks omitted.) Id.

The aforementioned cases provide ample support for this court's determination that a failure to strictly comply with statutory notice requirements will not invalidate the results of a referendum in the absence of evidence that there were *substantial* violations of the statute and, as a result of those violations, the reliability of the result of the election is *seriously in doubt*. In the present case, there is no evidence that the failure to strictly comply with the notice requirement,

by publishing an official "warning" in the newspapers, was substantial or caused the results of the referendum to be seriously in doubt. On the contrary, the evidence shows that, although a notice was not published in the legal notice section of *Voices*, an article, based on a news release from the Woodbury registrar of voters, was published in *Voices*' June 12, 2013 edition. This article set forth the question to be voted upon, the polling locations, and the time and date of the referendum. The article further indicated who was eligible to vote and the contact information for the town clerks and registrars of voters in both towns. Furthermore, the evidence indicates that the referendum garnered additional publicity in *Voices* and the *Waterbury Republican-American*, which published numerous articles concerning the referendum.

Moreover, notice of the date, time, location and referendum question was posted on the defendant's website, the defendant used its robo-calling system to contact parents and voters to notify them of this information and the defendant mailed every resident in both towns a notice concerning the referendum. Additionally, in an endeavor to bring to the attention of the voters of the project and referendum, there were publicized tours of the high school building, discussions of and presentations on the referendum/project at town board meetings and senior centers, a public hearing on the project immediately preceding the special meeting that set the referendum date, and prominent signage, including hand-held signs and banners.

Thus, so far as advising the voters was concerned, publishing the "warning" in the legal notices section of the newspaper would have been merely nominal in comparison with what was actually done to inform the town residents about the referendum that they were to vote upon. Indeed, it is apparent from the record that the referendum had a greater turnout than those past referenda that took place with proper notice. This indicates that the towns' electorates were well

advised of the referendum and it resulted in a full and fair expression of their will. In the present case, as in *Yonce* v. *Lybrand*, supra, 254 S.C. 14,"[n]o inference may be drawn from the record that a single vote was lost or affected by failure to publish a notice in strict compliance with the statute. It is, instead, clearly inferable that the publicity actually brought to bear on the issue was [far] greater than would have been afforded by strict compliance alone."

**III. Conclusion**

For the reasons stated, judgment shall enter for the defendant, Board of Education, Regional School District No. 14, on both counts of the plaintiffs' complaint. Judgment shall also enter in favor of the defendant (counterclaim plaintiff) on both counts of the counterclaim as set forth below.

A declaratory judgment shall enter as follows:

1) declaring that the notice issued as a result of the actions of the Town of Woodbury Register of Voters led to substantial (if not complete) compliance with the requirements of Connecticut General Statutes §§9-226, 10-47c and 10-56, that the results of the referendum are valid and comply with the requirements of Connecticut General Statutes §§9-226, 10-47c and 10-56, that the results of the referendum are valid and comply with the requirements of Connecticut General Statutes §§ 10-56, and will not be vacated.

2) declaring that said notice and/or the attendant publicity given to the June 18, 2013 referendum suffice for permitting the electors to participate in the referendum, that the results of the referendum are valid, and the results will not be vacated.

3) declaring that regardless of said actions with regard to complying with the notice

requirement of Connecticut General Statutes §9-226, the results of the referendum are valid (and reflected the intent of the voters/will of the people) and that the defendant (and the plaintiffs/towns) may act in reliance upon the results and proceed with the building project at issue, in accordance with Connecticut General Statutes § 10-56.

A writ of mandamus shall enter ordering the Town Clerks of the plaintiffs to certify the vote of the Towns from the June 18, 2013 referendum, as required by Connecticut General Statutes §10-47c.

BY THE COURT,

John W. Pickard

John W. Pickard